IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3901 OF 1993

1. Abdul Rajtak Abdul Rehman Mulla
2. Nurmohamed Abdul Rehman Mulla
   Both C/o. Bombay Mercantile Co-op.
   Bank Ltd., Kurla Branch,
   Satnam Chambers, Resivala Compound,
   L.B.S.Marg, Kurla, Bombay--400 070. : Petitioners

V/s.

Ibrahim Yusuf Lambe
At & Post Jambhari, Taluka and
District Ratnagiri. : Respondent

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Mr.A.V.Datar for the petitioners.

Mr.M.V.Sali for the respondent.

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CORAM : S.A. BOBDE, J.

September 27, 2005.

ORAL JUDGEMENT

1. By this petition, the petitioners have challenged the order of the Maharashtra Revenue Tribunal dated 30.11.1992. By the impugned order, the Maharashtra Revenue Tribunal has reversed the finding of the last

Court of facts which had held that the respondent is not a tenant in proceedings under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the "Act".

2. The matter has a long history and the MRT appears to have remanded the matter back to the fact finding authority on five occasions in the past. It is not necessary to go into that part of the history of the matter in detail.

3. The relevant facts are as follows:-

The petitioners are brothers. They are the sons of the original landlord Abdul Rehman Mulla who died in the year 1958 when they were about six years old. Their mother Jainabai re-married in 1961 and moved to another village. She has a sister Mariyam who is the mother of the respondent.

4. This matter relates to survey nos.12/4, 13/9 and 23/5 and 30/22A of village Jambhori, taluka and district Ratnagiri. The respondent had apparently been in cultivating possession of these lands. He appears to have been looking after other lands of the petitioners' father

such as lands at village Vatad. Being in possession, the respondent applied for being declared as a tenant under section 70(b) of the Act. The Extra-Aval Karkun held him to be a tenant. The petitioners appealed against that order. The question of tenability of the appeal went upto the MRT and then came up to this Court. Thereafter, the appeal was heard by the Collector, Ratnagiri, who held that the respondent is not a tenant by order dated 23.3.1977.

5. The petitioners and the respondent both applied for revision of this order and the matter was remanded back to the appellate authority who then confirmed the order of the Extra-Aval Karkun that he is a tenant.

6. This order was set aside by the MRT on the petitioners' revision. The matter was then sent to the Collector who remanded the matter to the Extra-Aval Karkun for disposal, in accordance with law. Even this order was challenged by the respondent by revision. In the revision, the matter was remanded to the appellate authority to decide the appeal himself on merits, in accordance with law. The Collector who heard the appeal confirmed the finding of the Extra-Aval Karkun that the respondent was a tenant. This was again subjected to a

revision. The MRT, in revision, found the order of the Collector vitiated, inter alia, on several counts. The MRT observed that the Collector wrongly put the onus to establish tenancy on the petitioners; he ought to have got the suspicious entries in V.F. 7/12 by sending for the original records. The MRT directed the appellate Court to record a clear finding whether the respondent was a contractual tenant and should reconsider the unusual observations made by the Collector that in Konkan area, there is no practice of passing rent receipts. Thereafter, the respondent filed a Writ Petition which was dismissed on 3.8.1980 and the matter came up for decision before the appellate authority in the last round of litigation.

7. The learned Collector, Ratnagiri, completely disbelieved the respondent’s claim that he was a tenant of the petitioners’ father, who died when they were minors. It is admitted in this case that there is no contractual tenancy. The appellate authority, therefore, decided the matter on other evidence available to it. The appellate authority rejected the respondent’s argument that he had paid rent to the petitioners’ mother, and after her remarriage, to the sister of Abdul Rehman. The appellate authority declined to draw an adverse inference from the fact that the ladies had not deposed in Court. As regards

the documentary evidence, the appellate authority found that the Akarphod patrak of village Jambhari which had the names of all the tenants prepared on 8.11.1956 does not show the respondent's name as a tenant. Therefore, the pik pahani which shows the cultivation of crops of the year 1957-58 could not have originally carried the respondent's name as a tenant. The appellate authority observed that there is a clear overwriting of the respondent's name on the word "Khud" in the 7/12 extracts for the years 1957-58, 1958-59, 1959-60 and 1960-61. The word "Khud" is obviously referable to the father of the petitioners. On the basis of this evidence, the appellate authority concluded that till the year 1961-62, the petitioners' mother was staying in Jambhori and the pik pahani which was in force according to Andersons' Revenue Manual, shows that there was no tenancy upto the year 1961-62.

8. The appellate authority also analysed the oral evidence and came to the conclusion that the witnesses have spoken with certainty regarding the respondent's possession, but not regarding his tenancy rights. The appellate authority rejected the fact of the respondent having paid land revenue in regard to the land in question on the ground that he pays such land revenue even in

regard to other lands of the petitioners' father such as the land situate at Vatad.

9. In conclusion, the appellate authority held that the respondent was not a tenant and that he was helping the the petitioners' family in their personal cultivation. There is no dispute about the position in law that the lands are liable to be treated as being cultivated personally even if cultivated through the agency of another.

10. It is this finding of fact which has been reversed by the Maharashtra Revenue Tribunal by the impugned order.

11. Mr.Datar, the learned counsel for the petitioners, submitted that the learned Maharashtra Revenue Tribunal has far exceeded the jurisdiction conferred on it by section 76 of the Act. Section 76 of the Act reads as follows:-

> "**76. Revision**.- Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the Maharashtra Revenue Tribunal constituted under the Act against any order of

the Collector on the following grounds only-

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal."

Indeed, this provision has always been held to restrict the power of the Tribunal to reverse findings of facts except on the grounds enumerated in clauses (a), (b) and (c). In Maruti Bala Raut v. Dashrath Babu Wathare

(A.I.R. 1974 S.C. 2051), the Supreme Court set aside the order of the Revenue Tribunal which had entered into a re-appreciation of the evidence and after discussing the evidence, set aside the order of the appellate Court. After reproducing section 76, the Supreme Court observed that the Tribunal could not have re-examined the evidence relied upon by the Prant Office and the Mamlatdar and reversed the finding of the Special Deputy Collector regarding the Kabulayats and the Record of Rights. The Supreme Court observed that:-

> "....there was no justification whatsoever for the Tribunal to interfere with the finding of fact recorded by the Special Deputy Collector."

12. Considering the impugned order, the submission of the learned counsel for the petitioners deserves acceptance. The learned MRT has completely reappreciated the entire evidence and has reversed the finding of fact arrived at by the last Court of facts i.e. the appellate authority. It has thereupon substituted that finding with its own finding that the respondent is, in fact, a tenant. After setting out the case of the parties, the learned MRT has reapprised the mutation entries which have been

over-written and which have been completely disbelieved by the appellate authority. It appears that the MRT has observed that on one occasion, the respondent has been held to be a tenant; on another, he has been held not to be tenant and, therefore, has given undue weightage to the long possession of the respondent since the death of the petitioners' father in the year 1958 when they were minors. The MRT has made what appears to be a completely irrelevant observation to that effect that the respondent's possession and cultivation is not unauthorised because there is no evidence to show that he has committed trespass upon the land. On the basis that there was no evidence to show that the petitioners took objection to the respondent's possession and cultivation, the MRT came to the conclusion that the respondent's possession is neither unauthorised nor illegal. Even here the MRT seems to have completely misdirected itself in that the question was not whether the possession and cultivation was unauthorised or illegal, but whether it was in the respondent's capacity as a tenant. While arriving at this finding, the MRT has made the observation that it can be "presumed" that the revision applicant must have paid some rent of khand sometime to the predecessors of the opponents, otherwise the opponents (petitioners herein) would not have allowed the revision applicant to

cultivate the land. For making this observation, the MRT has not referred to any evidence at all.

13. Another aspect which deserves to be taken note of for setting aside the judgement of the MRT is that the MRT has made copious references to the order of the Collector while considering Appeal no.13 of 1981 dated 29.12.1986. The MRT has certified that order to be a correct order without realising that it has been set aside by the MRT on an earlier occasion in Revision Application no.71 of 1987. The MRT appears to have been conscious of the fact that this order was set aside. It is unusual that in spite of this the MRT has made the following observations regarding the order which was set aside:-

> "I myself need not dwell upon each and every point in detail. I can accept the said reasoning and finding of the learned Collector for the purposes of arriving at a just and proper conclusion in the present revision application."

In fact, it is clear that the MRT has consciously entered into areas of fact and transgressed the limits placed on it by section 76 on the ground that the matter has been

pending decision since long and should be decided by the MRT itself instead of remanding the matter to the last Court of facts. In other words, the learned MRT seems to have entered into re-appreciation of evidence consciously and in contravention of section 76.

14. It was rightly pointed out by the learned counsel for the petitioners that the MRT has committed an error similar to the one which fell for consideration by the Supreme Court in Hanmanta Daulappa Nimbal since deceased by his heirs and LRs. v. Babasaheb Dajisaheb Londhe (A.I.R. 1966 S.C. 223) where the Supreme Court considered the claim of oral tenancy of agricultural lands and observed that mere lawful possession over the land did not give rise to an inference of tenancy. The Supreme Court has observed as follows:-

> The burden is on the appellant to establish his lawful possession. Except the oral tenancy, no other evidence was brought on record. Entries in the revenue records cannot establish lawful possession, when admittedly, no notice was given to the respondent before making those entries. The other circumstances is payment of land

> revenue to the Government through Talhatti (village servant). For the payment thereof also, there is no notice or acquiescence by the landlord."

15. The situation is similar in this case. Having regard to the aforesaid circumstances, I am of view that the impugned order deserves to be set aside. The rule is made absolute in the above terms.

16. At this stage, Mr.Sali, the leaned counsel for the respondent, makes a request that having regard to the long standing possession of the respondent over the agricultural lands, this Court should stay this judgement for sometime. The request is opposed on behalf of the petitioners on the ground that the respondent is merely seeking a stay of the declaration. However, having regard to the circumstances of the case and in the interest of justice, I consider it appropriate to stay the effect and operation of this judgement for a period of six weeks from today. Order accordingly.

17. Certified copy expedited.

S.A. BOBDE, J.